

INTERAGENCY AGREEMENT  
BETWEEN  
THE DEPARTMENT OF TRANSPORTATION  
AND  
THE DEPARTMENT OF PUBLIC SAFETY

DPS CONTRACT NO. 2001-065

THIS AGREEMENT is entered into MARCH 27 2001,  
between agencies of the STATE OF ARIZONA, to wit; the DEPARTMENT OF  
TRANSPORTATION, acting by and through its Director (the "DOT") and ARIZONA  
DEPARTMENT OF PUBLIC SAFETY, acting by and through its Director (the "DPS").

I. RECITALS

1. The DOT is empowered by Arizona Revised Statutes Section 28-108 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the DOT.

2. The DPS is empowered by Arizona Revised Statutes Section 41-1713 to enter into this agreement and has resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the DPS.

3. The DPS and DOT entered into an agreement in August 2000, a copy of which is attached hereto as Exhibit A and made a part hereof, with the goal of maintaining the efficient movement of traffic on Maricopa Association of Governments (MAG) regional highways. The DPS also entered into an agreement in August 2000 with MAG, a copy of which is attached hereto as Exhibit B and made a part hereof, for MAG funding of the program for the first two years (FY 2001 and 2002). The DOT has agreed to fund the program for FY2003 through 2005, in a total amount for the 3 years currently estimated at \$750,000.00. This agreement is to define the terms of the transfer of funds from DOT to DPS and the expenditure of same.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

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## II. SCOPE

### 1. The DPS will:

a. Continue the service patrols (funded by MAG for the initial two year period FY 2001 – 2002) during FY 2003 – 2005, generally in accordance with the terms, goals and objectives of Exhibits A and B.

b. No more often than monthly, invoice the DOT, in the form of Exhibit C, for costs associated with the program, with no profit or fee. Provide the DOT quarterly reports for the outcome-based performance measurements for the program as provided before to MAG. Direct reports and invoices to Ass't State Engineer, Traffic Operations Center, 2302 West Durango Street, Mail Drop PM02, Phoenix, AZ 85009-6452.

### 2. The DOT will:

Reimburse DPS within 30 days after receipt of invoices for services provided, in a total amount for FY 2003-2005 currently estimated at \$750,000.00.

## III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until cancelled by either party or other competent authority.

2. This agreement shall become effective upon execution by the parties hereto.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth in Arizona Revised Statutes Section 12-1518.

6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007

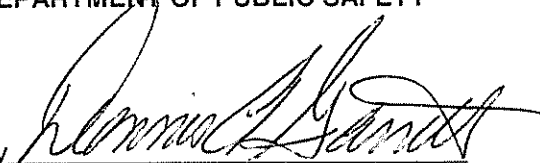
Arizona Department of Public Safety  
Ass't Director, Patrol Division  
2102 West Encanto Blvd.  
PO Box 6638  
Phoenix, AZ 85005-6638

STATE OF ARIZONA

DEPARTMENT OF PUBLIC SAFETY

DEPARTMENT OF TRANSPORTATION

By



DENNIS A. GARRETT  
Director



MARY E. PETERS  
Director

3-27-01

(date)

2/13/01

(date)



APPROVED - LEGAL SECTION  
ARIZONA DEPARTMENT OF  
PUBLIC SAFETY

The Arizona Departments of Public Safety and Transportation  
Joint Operating Statement for Service Patrols and the ALERT Program

August 17, 2000

INTRODUCTION

The Arizona Department of Public Safety (DPS) and the Arizona Department of Transportation (ADOT) have long recognized the importance of maintaining the efficient movement of traffic on our state's highways. Continuous increases in travel, with traffic growth rates that exceed expansion of the highway system, contribute to congestion, air pollution, delays associated with incidents, and serious economic implications. Lane or road closures of any kind in areas with highly congested roadways can result in entire communities being gridlocked with few if any alternate routes available. Secondary crashes related to incidents increase delays, and increase liability for public agencies.

Our agencies have the responsibility to do whatever is reasonable and necessary to reduce the delays associated with incidents, accidents, roadway maintenance, construction, and law enforcement activities. Minor incidents, such as disabled vehicles on the side of the roadway, can cause traffic congestion that may result in more serious incidents.

Part of the solution to these problems is the implementation of the DPS Freeway Service Patrol program. The following joint agency guidance is based on the philosophy that our roadways will not be closed or restricted for any longer than is absolutely necessary.

OPEN ROADS PHILOSOPHY

Whenever a roadway or lane is closed or partially blocked by any crash, incident, secondary crash or vehicle breakdown, the Arizona Department of Public Safety officers, Freeway Service Patrol operators, and Department of Transportation forces shall open the roadway as soon as possible, on an urgent basis.

Public safety is the highest priority and must be maintained at all times. Roadways will be cleared as soon as initial investigative needs are met, medical care is provided, and any hazardous cargo is removed. It is understood that some damage to vehicles or cargo may occur as a result of clearing the roadway on an urgent basis. While reasonable attempts to avoid such property damage shall be taken, the highest priority is restoring traffic to normal safe conditions.

## DPS FREEWAY SERVICE PATROL RESPONSIBILITIES

The Service Patrol will be assigned to urban freeway coverage as prescribed by DPS. The operators will maintain roving patrol in those areas during the hours assigned. They will provide assistance to motorists as needed, including minor repairs, flat tire changes, summoning assistance as requested, directing traffic at incident scenes to increase traffic capacity, removing debris that is a traffic hazard, and marking abandoned vehicles. They will also relocate disabled vehicles from the traveled lanes, by use of push bumpers or tow straps, to the nearest safe location. If first at the scene of minor crashes, and if the drivers involved are able and willing to do so, they will clear the lanes to a safe location.

In the case of more serious crashes, at the direction of DPS officers, the Service Patrol operators will establish traffic control, provide warning to motorists approaching the end of the queue, and provide any other assistance as directed. They will provide initial traffic control at all blocking incidents in support of the investigating officers, assist with debris removal, manually direct traffic, and provide any other support as requested.

DPS personnel who respond to the scene of traffic incidents will make clearing the roadway a priority. If, in their judgement, one or more lanes will be blocked for one or more hours, then ADOT will be notified as soon as possible that support from ALERT may be needed.

Whenever practical, to reduce the delays associated with motorists slowing down to "rubberneck," stalled or damaged vehicles will be removed to off-ramps or other areas for the completion of any required investigative reports, damage assessment, and witness statements. Tow trucks will be requested as soon as it is evident that they will be needed to remove vehicles from the freeway.

DPS Communications will support consistent incident status updates from the Service Patrol operators or patrol officers, through Dispatch, to the ADOT Traffic Operations Center (TOC) to facilitate accurate and timely motorist information.

## ADOT RESPONSIBILITIES

Whenever the DPS personnel on scene make an initial estimate that the incident will block one or more lanes for one or more hours, they will immediately request the support of ADOT's ALERT incident response team. Upon arrival of the ALERT team and establishment of traffic control including queue protection, the Service Patrol operators will be returned to their normal freeway patrol duties.

The ADOT area maintenance supervisor or a representative will respond to all incidents requiring more support than the initial ALERT response. The supervisor will coordinate with the DPS incident commander when the equipment and manpower needed to reopen

the roadway is beyond the capabilities of the on-scene towing resources. If commercial loads are spilled or overturned, ADOT and DPS will make every effort to facilitate the relocation of the materials out of the traveled lanes in the shortest possible time, using whatever equipment and other resources as may be necessary. All such materials or vehicles will be relocated as short a distance as possible in order to open the lanes and to reduce the traffic hazard.

ADOT will provide long-term traffic control in accordance with the MUTCD standards (Manual of Uniform Traffic Control Devices) whenever an incident is estimated to close lanes for 3 or more hours. The ADOT maintenance supervisor or their representative will coordinate the traffic control and alternate route implementation. They will also ensure that the appropriate local agencies are advised when closures will cause traffic pattern changes on local roadways.

ADOT will assume the responsibility for keeping the TOC informed of incident status when the ALERT team or maintenance forces are at the scene. They will provide information as necessary to other transportation agencies that may be affected by the traffic pattern changes associated with the incident.

## INTERAGENCY COORDINATION


When an investigation is required, it will be conducted in as expedient a manner as possible considering the severity of the collision. Lengthy investigations will require prioritization of tasks, diligent use of resources, and due consideration for use of detour routes to reduce traffic delays. Portions of the investigation may be delayed until the roadway is open and lighter traffic conditions allow completion of those tasks. DPS will only close those lanes that are absolutely necessary to conduct the investigation safely. Officers will coordinate with ADOT representatives to establish alternate routes, expedite the movement of traffic, and restore the roadway to normal traffic as soon as possible. DPS personnel will also provide incident status information on a regular and timely basis to the ADOT Traffic Operations Center (TOC).

DPS will not unnecessarily delay the reopening of all or part of a roadway to allow a company to dispatch their own equipment to offload or remove a vehicle or load material from the traveled portion of the roadway during peak traffic hours. DPS and ADOT will cooperate fully in planning and implementing clearance operations in the safest and most expeditious manner.

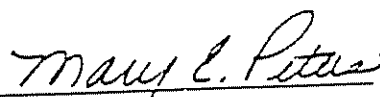
DPS and ADOT will conduct regular meetings to coordinate the activities of the service patrols, ALERT team and maintenance resources. They will also participate in after-action reviews of all incidents closing one or more lanes for three or more hours. Other agencies participating in these incidents will also be invited to the after-action review.

## STATEMENT OF COMMITMENT AND PARTNERSHIP

We, the undersigned, provide this Interagency Agreement as guidance to our agencies for safe and effective handling of roadway incidents. We are committed to the safety of all DPS and ADOT employees, the safety of other responders, the safety of the motoring public, and the efficient operation of our state highways. All employees will be informed of this agreement and it shall be posted in all DPS and ADOT offices.

SIGNED   
Col. Dennis Garrett, Director  
Arizona Department of Public Safety

DATE Sept. 19, 2000

SIGNED   
Mary E. Peters, Director  
Arizona Department of Transportation

DATE August 29, 2000

  
APPROVED - LEGAL SECTION  
ARIZONA DEPARTMENT OF  
PUBLIC SAFETY



MARICOPA ASSOCIATION OF GOVERNMENTS

MAG Agreement No. 0121

AGREEMENT FOR THE REGIONAL FREEWAY SERVICE PATROL

This AGREEMENT entered into as of the 14th day of August, 2000, by and between the Maricopa Association of Governments hereinafter called MAG, and Arizona Department of Public Safety, a State Agency of the State of Arizona, hereinafter referred to as DPS.

RECITALS

WHEREAS, MAG is the recipient of Federal Highway Administration Congestion Mitigation and Air Quality (CMAQ) Funds as described in the FY 2001 MAG Unified Planning Work Program; as described in the 2001 agreement between MAG and the Arizona Department of Transportation.

WHEREAS, MAG desires to contract for the regional Freeway Service Patrol project with the DPS.

NOW THEREFORE, the parties hereto mutually agree as follows:

I. SCOPE OF WORK

The scope of work to be accomplished by the parties pursuant to this AGREEMENT is set forth by MAG in the Unified Planning Work Program (UPWP) for FY 2001.

The work elements, funding and outcome-based performance measurements from the approved UPWP is included in Appendix A-1. The scope of services, and the planned schedule and budget are included in Appendices A-2 and A-3, respectively and made a part of this AGREEMENT. The scope of services shall be consistent with the Intergovernmental Agreement on the Regional Freeway Service Patrol operations to be established between DPS and Arizona Department of Transportation.

II. PROJECT COSTS AND BILLING PROCEDURES

A. Invoices will be submitted monthly documenting services by each work task, the hours and hourly rate of each person, and other direct expenses. All Costs incurred in preparing invoices and progress reports shall be included in the general and administrative expenses or the overhead. A billing format shall be provided to the DPS by MAG.

B. The basis for payment to the DPS for services rendered hereunder shall be reimbursement for costs in conformance with the budget described in Appendix A-3 and pursuant to the cost breakdown furnished by the DPS, the detailed budget and scope of services approved by MAG, in accordance with the adopted UPWP. The payment for each task described in



Appendix A-2 will not exceed the amount shown for that task in the budget. The DPS may make adjustments within the tasks of the approved budget as needed to accomplish the requirements of the Scope of Services. No adjustment shall exceed 10 percent of the task budget without prior written approval from the MAG Executive Director or Assistant Director. Any such change shall also be subject to approval by Arizona DOT and Federal Highway Administration.

- C. The DPS shall maintain cost records in accordance with Article III, Records and Audit Rights, of this AGREEMENT. Costs shall be available for verification audit by the authorized representatives of MAG, the Federal Highway Administration and the Comptroller General of the United States. MAG agrees to make payments provided progress is commensurate with work completed. Partial payment shall be made to the DPS upon receipt of a monthly report of work accomplished and invoices, but not more often than once each month. Final payment of any balance due the DPS will be made upon completion and acceptance of work and services to be completed hereunder.
- D. The DPS agrees to make quarterly reports on in-kind contributions in the form of office space, furniture and furnishings, office equipment, office support and overhead costs as required by the applicable federal grantor as described in the UPWP.
- E. The DPS agrees to make quarterly reports for the outcome-based performance measurements for the Freeway Service Patrol Project.

### III. RECORDS AND AUDIT RIGHTS

The DPS's work and accounting records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by MAG to substantiate charges and claims related to this AGREEMENT shall be open to inspection and subject to audit and/or reproduction by authorized representatives of MAG, Federal Highway Administration, and the Comptroller General of the United States ("Auditors") to the extent necessary to adequately permit evaluation and verification of the performance and cost of the work, and any invoices, change orders, payments or claims submitted by the DPS or any of its payees pursuant to the execution of the AGREEMENT. The Auditors shall be afforded access, at reasonable times and places, to all of the DPS's records and personnel pursuant to the provisions of this article throughout the term of this AGREEMENT and for a period of five (5) years after last or final payment.

If an audit in accordance with this article discloses overcharges, of any nature, by the DPS to MAG in excess of five percent (5%) of the total AGREEMENT billings, the actual cost of the Auditor's audit shall be reimbursed to the auditing organization by the DPS. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the DPS's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the Auditor's findings to DPS.

#### **IV. COSTS**

Costs of DPS shall include the cost for vehicles and other equipment, all direct labor costs, all direct non-labor costs and all overhead costs. OMB Circular A-87 will be used to determine allowable costs.

- A. Direct labor cost is defined as the actual salaries and salaries cost burden of all employees of the DPS used for the time directly chargeable to work to be performed hereunder including time involved in travel.
- B. Direct non-salary costs shall include any actual expenditures required directly in performance of services hereunder other than actual direct labor costs.
- C. The DPS's overhead is defined as the costs which are not directly allocable to the project as a direct labor cost or direct non-salary cost as defined above. The DPS shall maintain records setting forth the actual overhead as computed from the annual financial statement(s) applicable to the work period under this AGREEMENT and these are to be kept available for inspection for a period of five (5) years after final payment.

#### **V. KEY MANAGEMENT PERSONNEL**

In the event that any of the key project management personnel of the DPS set forth in Appendix A-2 becomes unavailable, the DPS will notify MAG and substitute other personnel to insure proper performance and continuity.

#### **VI. ASSIGNMENT AND SUBCONTRACTING**

The DPS shall not assign or subcontract any part of this AGREEMENT or the work to be performed hereunder.

#### **VII. ADMINISTRATIVE RULES AND REGULATIONS AND APPLICABLE LAW**

The DPS shall become and remain informed of all applicable Federal, State and local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having any jurisdiction or authority which may in any manner affect the completion of the project under this AGREEMENT. The DPS shall observe and comply with all such laws, ordinances, rules, regulations, orders, and decrees and obtain all permits that are applicable to the performance of services outlined. Appendices B, C and D describe additional provisions required to comply with Title VI and Title VII of the Civil Rights Act of 1964; and Appendix E describes environmental, resource, energy protection, and conservation requirements. These Appendices are considered part of the AGREEMENT.

#### **VIII. SUBRECIPIENT AUDITS**

The DPS, which is a state agency of the State of Arizona, and is defined as a "subrecipient" pursuant to 31 U.S.C. § 7501, that expends \$300,000 or more in federal awards in its fiscal year shall comply with the audit and reporting requirements set forth in 31 U.S.C. Subpart A—General, Section 105, Definitions.

In compliance with the Federal Single Audit Act of 1996 (P.L. 104-156), Contractors designated as subrecipients expending federal funds from all sources totaling \$300,000 or more shall have a yearly

audit conducted in accordance with the audit and reporting standards as prescribed in OMB Circular A-133 (Audits of State, Local Governments, and Non-Profit Organizations). The audit shall include separate reports on the financial statements, internal controls, compliance, the Supplementary Schedule of Expenditures of Federal Awards and the Schedule of Findings and Questioned Costs. MAG's contract number(s), applicable task number(s) and the award amount(s) shall be included in a separate schedule if not included on the Supplementary Schedule of Expenditures of Federal Awards. The DPS's annual audit report and an action plan for the resolution of any findings and/or questioned costs shall be submitted to MAG within nine months of the DPS's fiscal year end.

The DPS is subject to the programmatic and fiscal monitoring requirements of each MAG program to ensure accountability of the delivery of all goods and services, as required under the Federal Single Audit Act. A minimum fiscal requirement for all Contractors, designated as subrecipients, is an annual financial audit, which includes MAG's contract number(s), applicable task number(s) and the award amount(s). The audit shall be submitted to the MAG location, as specified in the reporting requirements of the contract between the DPS and MAG.

MAG may, at its discretion, periodically request additional information from the DPS.

#### **IX. WRITTEN ORDERS REQUIRED FOR CHANGES**

No changes in the scope, character, or complexity of work shall be made by the DPS without first receiving a written approval by MAG's Executive Director or Assistant Director properly defining and limiting any such change. It is distinctly understood and agreed that no claim for payment for extra work done or materials furnished by the DPS shall be paid by MAG except as hereinabove provided; nor shall the DPS do any work or furnish any materials not covered by this AGREEMENT unless a written order is first received from MAG's Executive Director. Any such change to scope of work shall be subject to approval by Arizona DOT and Federal Highway Administration. Any such work or materials furnished by the DPS without such written order shall be at the risk, cost, and expense of the DPS, and no claim for compensation for any such work or materials shall be made.

#### **X. TERMINATION, ABANDONMENT OR POSTPONEMENT**

The right is reserved by MAG or DPS to terminate or abandon this project and this AGREEMENT by giving written notice to either party at least forty five (45) days prior to the effective date of termination. In the event of such termination, MAG shall be liable to the DPS for acceptable work performed to the date of termination only, computed as provided in Section II, Project Costs and Billing Procedures, and Section IV, Costs, of this AGREEMENT. The right is also reserved by MAG or DPS to indefinitely postpone work on this project by giving twenty-four (24) hour written notice.

#### **XI. FISCAL LIMITATIONS**

In the event that the funds required for performance of this AGREEMENT are withdrawn or are not available for funding hereunder, this AGREEMENT without penalty to either party may be immediately terminated. MAG shall be liable to the DPS for acceptable work performed to the date of termination only, computed as provided in Section II and Section IV of this AGREEMENT.

#### **XII. RELATIONSHIP OF MAG AND THE DPS; EXERCISE OF MAG'S POWERS**

It is understood and agreed that the DPS is an "independent authority" and that no relationship of

as a result of the execution of this AGREEMENT; and the DPS shall not exercise any powers of MAG nor make any AGREEMENT, obligation, or commitment on behalf of MAG nor in any other way represent any of the DPS of its employees as agents of MAG.

### **XIII. INDEMNIFICATION**

Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury to any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

### **XIV. REVIEWS OF DPS'S WORK**

Work performed by the DPS shall be subject to periodic reviews and partial acceptance at various stages. MAG reserves the right to make such reviews and pass upon the acceptability of the DPS's work on behalf of itself, the State, and other affected public agencies. No partial acceptance shall relieve the DPS's obligation to take reasonable efforts to correct, without charge, any errors in the work. An Interagency Oversight Team consisting of MAG, DPS, ADOT and FHWA shall provide project oversight over the first five years of this project.

### **XV. CONTINUING OBLIGATION**

The DPS agrees that if, because of death or any other occurrence, it becomes impossible for any key employee of the DPS to render the services required under this AGREEMENT, the DPS shall not be relieved of any obligation to render complete performance.

### **XVI. GENERAL PROVISIONS**

#### **A. ENTIRE AGREEMENT**

This AGREEMENT constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This AGREEMENT may not be modified or amended except by a written document, signed by authorized representatives of each party.

#### **B. ARIZONA LAW**

In the event of litigation between the DPS and MAG involving this AGREEMENT, the laws and decisions of the State of Arizona shall apply and any such litigation shall be commenced and prosecuted in the appropriate court of competent jurisdiction within the geographical boundaries of the State of Arizona.

#### **C. MODIFICATIONS**

Any amendment, modification or variation from the terms of this AGREEMENT shall be in writing and shall be effective only after approval of all parties signing the original AGREEMENT.

D. SUCCESSORS AND ASSIGNS

This AGREEMENT shall extend to and be binding upon DPS, its successors and assigns.

E. ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this AGREEMENT, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

F. NOTICES

All notices or demands required to be given pursuant to the terms of this AGREEMENT shall be given to the other party in writing, delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

For DPS

Colonel Dennis Garrett  
Director  
Arizona Department of Public Safety  
2102 W Encanto Blvd  
Phoenix AZ 85005  
Ph: (602) 223-2359  
Fax: (602) 223-2917

For MAG

James M. Bourey  
Executive Director  
Maricopa Association of Governments  
302 North 1st Street, Suite 300  
Phoenix, Arizona 85003  
Ph: (602) 254-6300  
Fax: (602) 254-6490

Notices shall be deemed received on date delivered, if delivered by hand, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, ten (10) days after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission.

G. FORCE MAJEURE

Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.

H. COUNTERPARTS

This AGREEMENT may be executed in one or more counterparts, and each originally executed duplicate counterpart of this AGREEMENT shall be deemed to possess the full force and effect of the original.

I. CAPTIONS

The captions used in this AGREEMENT are solely for the convenience of the parties, do not constitute a part of this AGREEMENT and are not to be used to construe or interpret this AGREEMENT.

J. SEVERABILITY

If any term or provision of this AGREEMENT shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this AGREEMENT shall remain in full force and effect and such term or provision shall be deemed to be deleted.

K. AUTHORITY

Each party hereby warrants and represents that it has full power and authority to enter into and perform this AGREEMENT, and that the person signing on behalf of each has been properly authorized and empowered to enter this AGREEMENT. Each party further acknowledges that it has read this AGREEMENT, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers.

MARICOPA ASSOCIATION OF GOVERNMENTS

8-14-00  
DATE

By James M. Bourey  
James M. Bourey  
MAG Executive Director

DEPARTMENT OF PUBLIC SAFETY

8/9/00  
DATE

By Colonel Dennis Garrett  
Colonel Dennis Garrett  
Director DPS

Reviewed as to form:

By 8/4/2000  
DATE

By John H. Hwin  
MAG General Counsel

Reviewed as to form:

By 8-8-00  
DATE

By [Signature]  
DPS Attorney

CERTIFICATION OF MAG

I hereby certify that I am the MAG Executive Director and that the DPS or its representative has not been required, directly or indirectly as an expressed or implied condition in connection with obtaining or carrying out this AGREEMENT to:

- A. Employ or retain, or agree to employ or retain, any firm or person; or
- B. Pay, or agree to pay, to any firm or person or organization, any fee, contribution, donation, or consideration of any kind.

I acknowledge that this certificate is to be furnished to the Federal Highways Administration and is subject to applicable State and Federal laws, both criminal and civil.

8-14-00

Date

James M. Bourey  
James M. Bourey  
MAG Executive Director



CERTIFICATION OF DPS

I hereby certify to the best of my knowledge and belief that DEPARTMENT OF PUBLIC SAFETY, STATE OF ARIZONA and I as the Director:

- A. Have not employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above firm) to solicit or secure this AGREEMENT;
- B. Have not agreed, as an expressed or implied condition for obtaining the AGREEMENT, to employ or retain the services of any firm or person in connection with carrying out the AGREEMENT;
- C. Have not paid, or agreed to pay, to any firm, organization, or person (other than a bona fide employee working solely for me or the above firm) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the AGREEMENT;
- D. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency, and are not prohibited from working on Federally assisted projects;
- E. Have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or AGREEMENT under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- F. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commissions of any of the offenses enumerated in paragraph (E) of this certification; and
- G. Have not within a three-year period preceding this application/proposal had one or more public transaction (Federal, State or local) terminated for cause or default.

Where the DPS is unable to certify to any of the statements in this certification, it shall attach an explanation.

I acknowledge that this certificate is to be furnished to MAG and the Federal Highway Administration and is subject to applicable State and Federal laws, both criminal and civil.

August 9, 2000  
Date

Colonel Dennis Garrett  
Colonel Dennis Garrett  
DPS Director

2-11-00

### CERTIFICATION LIMITING LOBBYING ACTIVITIES

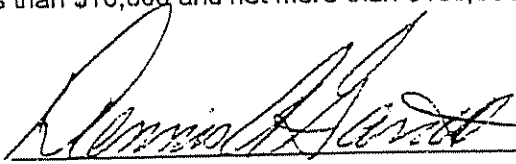
Col. Dennis Garrett, acting as agent for the DPS certifies, to the best of his knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the DPS to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the DPS shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The DPS shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements), which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Colonel Dennis Garrett  
DPS Director

8-9-00  
Date



## **APPENDIX A-1**

### **FY 2001 UPWP**

#### **Regional Freeway Service Patrol (FSP)**

A Regional Freeway Service Patrol to cover the urban freeway system will be initiated. This service will be closely coordinated with DPS and ADOT operations. Fully equipped FSP vehicles will patrol the freeway system and push stalled vehicles off the freeway lanes, clear debris, make minor repairs, and help direct traffic if requested by DPS officers at accident scenes.

#### **FY 2001 Objectives**

Improve safety through roadside motorist assistance services and prompt removal of road debris and stalled vehicles.

#### **FY 2001 Outcome Measures**

Develop an implementation program and obligate programmed funds to ensure implementation of a Freeway Service Patrol in the region over the FY 2001-2005 period.

#### **Budget: FY 2001 Carryover Pass-through Agreements**

Task # 501.30 Freeway Service Patrol - DPS \$ 750,000 Federal CMAQ

## APPENDIX A-2

### SCOPE OF SERVICES

The Regional Freeway Service Patrol Program is a coordinated effort by Maricopa Association of Governments (MAG), Arizona Department of Public Safety (DPS), Arizona Department of Transportation (ADOT), and Federal Highway Administration (FHWA). The program will enhance traffic flow on Phoenix area freeways in order to maximize the operation of the highway network. The Service Patrol Program is one tool for the efficient management of existing highway facilities. By providing assistance to motorists in the event of minor accidents or disabled vehicles, the Program can provide prompt clearance of incidents that may impede the flow of traffic on the urban freeway system. Traffic delays due to minor accidents, stalled vehicles and other lane-closing situations can cause secondary accidents which may lead to injuries or fatalities, and reduce the ability of response agencies to provide quick clearance or answer other emergency calls. Resulting delays also have an economic impact of lost wages, spent fuel, missed appointments or flights, and undelivered cargo. In addition, the public is affected by additional stress and fatigue, increased air pollution and the wear and tear on motor vehicles. The Service Patrols can help prevent further loss of life and property by helping to minimize the impact of freeway incidents on the flow of traffic through the urban areas.

This program is being launched as an essential component of regional Intelligent Transportation Systems (ITS). At present, only 42 freeway miles are under surveillance via Arizona Department of Transportation's Freeway Management System. Many miles of urban freeway are currently not instrumented. This program will address the entire urban freeway system. It is anticipated that the Freeway Service Patrol may support and enhance regional traffic management functions through prompt identification and relaying of crucial on-the-spot information via the ADOT Traffic Operations Center to all key traffic management agencies in the region.

The goals of this AGREEMENT are:

- 1) The establishment of the Regional Freeway Service Patrol Program, and
- 2) The continuous operation of the service for two years.

### PROGRAM GOAL

The primary goal of the Regional Freeway Service Patrol Program is to provide prompt incident response and effective roadside motorist assistance at all highway incidents that may impede traffic flow along the urban freeway system. The operators will assist motorists, assist agencies dealing with highway incident response, remove debris and perform duties as directed to maintain the safe traffic flow. Operational details are as described in the related Intergovernmental Agreement between Arizona Department of Transportation and DPS.

### PROGRAM OBJECTIVES

1. Increase safety for stranded motorists and other responders
2. Decrease delays for stranded motorists
3. Decrease the number of abandoned vehicles through prompt response to stopped vehicles
4. Reduce exhaust emissions through improvement of traffic flow at incident scenes

5. Reduce the number of secondary crashes through improved traffic management of incidents
6. Decrease delays and hazards associated with debris on the roadway

## **KEY MANAGEMENT PERSONNEL**

Commander Terry Conner will lead this project for DPS as the project manager. In the event the DPS project manager becomes unavailable, the DPS will notify MAG and substitute other personnel to insure proper performance and continuity.

## **TASKS TO BE PERFORMED**

The major tasks to be performed by DPS are described below. The operational details that may refer to agency coordination and agency responsibilities are as specified in the Intergovernmental Agreement to be established between DPS and Arizona Department of Transportation.

### **TASK 1: Acquire Vehicles and Equipment**

The Freeway Service Patrol vehicles will be fully equipped with two-way radios, cellular phones, water, first aid supplies, air compressors, channelization devices such as traffic cones, flares, etc., and light tools such as jacks, lug wrenches, wrenches, etc.

### **TASK 2: Hire New DPS Staff and Provide Training**

This task will involve hiring and training of operators. DPS will be responsible for the Freeway Service Patrol program implementation and supervision of the employees under the Law Enforcement Merit System Council (LEMSC) rules. Freeway Service Patrol employees will be governed under DPS policy and procedures. DPS will be responsible for providing necessary training for the eight Freeway Service Patrol positions that will be assigned exclusively to the State Highway system within the Metropolitan Phoenix area.

### **TASK 3: Provide Continuous Services**

Commence and provide continuous services on the regional freeway system in Maricopa County during the period stipulated in Appendix A-3. Specially equipped patrol vehicles will be scheduled to provide a coverage of 16 hours per day, 7 days per week. Emphasis will be placed on high traffic volume periods such as weekdays during rush hour traffic times and holiday weekend periods such as Memorial Day, Labor Day, etc.

### **TASK 4: Quarterly Progress Reports and Interagency Oversight Team**

Quarterly progress reports will be submitted to MAG within 45 days following close of each quarter (1<sup>st</sup> quarter is from October 1 - December 31). DPS will participate in scheduled meetings of the Interagency Oversight Team consisting of MAG, DPS, ADOT and FHWA.

### **TASK 5: Program Evaluation**

DPS will submit summary program evaluation data to MAG on a quarterly basis. This will include feedback received from motorists that have received roadside assistance.

## APPENDIX A-3

### PROJECT SCHEDULE & BUDGET

It is anticipated that the Freeway Service Patrol Program will commence on or about September 1, 2000. The scope of services included in this AGREEMENT will be completed on or about August 30, 2002.

#### SCHEDULE

<u>TASK</u>	<u>BEGIN</u>	<u>END</u>
TASK 1	09/01/2000	09/30/2000
TASK 2	09/01/2000	09/30/2000
TASK 3	10/01/2000	08/30/2002
TASK 4	09/01/2000	08/30/2002
TASK 5	09/01/2000	08/30/2002

#### BUDGET

		Year 1	Year 2	TOTAL
Task 1	Vehicles Equipment	\$ 280,000 \$ 54,000		\$334,000
Task 2	Training	\$17,000		\$17,000
Task 3	Services	\$187,000	\$204,000	\$391,000
Task 4	Reports & Meetings	\$2,000	\$2,000	\$4,000
Task 5	Evaluation	\$2,000	\$2,000	\$4,000
		\$542,000	\$208,000	\$750,000

## **APPENDIX B**

### **COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AIDS CONTRACTS**

The subcontractor will comply with Executive Order 11246 entitled Equal Employment Opportunity as amended by Executive Order 11375 and as supplemented in Department of Labor Regulations (41 Code of Federal Regulations Part 60) which are herein incorporated by reference and made a part of this AGREEMENT.

## APPENDIX C

### EXECUTIVE ORDER 75-5 APRIL 28, 1975 REVISED NOVEMBER 25, 1980

#### PART I: NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS

All government contracting agencies shall include in every government contract hereinafter entered into the following provisions:

During the performance of this Contract, the contractor agrees as follows:

- A. The contractor will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, or national origin. The contractor will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, age, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- B. The contractor will in all solicitations or advertisements for employees by or on behalf of the contractor state that all qualified applicants will receive consideration for employment without regard to race, age, color, religion, sex, or national origin.
- C. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this Executive Order and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The contractor will furnish all information and reports required by the contracting agency and will permit access to his books, records, and accounts by the contracting agency and the Arizona Civil Rights Division, hereafter referred to as Civil Rights Division, for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- E. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders of the Civil Rights Division said noncompliance will be considered a material breach of the contract and this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further government contracts until said contractor has been found to be in compliance with the provisions of this order and the rules and regulations of the Civil Rights Division, and such sanctions may be imposed and remedies invoked as provided in Part II of this order, and the rules and regulations of the Civil Rights Division.
- F. The contractor will include the provisions of paragraphs A through E in every subcontractor purchase order so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect in the subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the State of Arizona to enter into such litigation to protect the interests of the State of Arizona.



- G. Each contractor having an contract containing the provisions prescribed in this section shall file and shall cause each of his subcontractors to file compliance reports with the contracting agency or the Civil Rights Division, as may be directed. Compliance reports shall be filed within such times and shall contain such information as the practices, policies, programs and employment policies, programs and employment statistics of the contractor and subcontractor, shall be in such form as the Civil Rights Division may prescribe.
- H. Bidders or prospective contractors or subcontractors shall be required to state whether they have participated in any previous contract subject to the provisions of this order or any preceding similar Executive Order and in that event to submit on behalf of themselves and the proposed subcontractors compliance reports prior to, or as an initial part of negotiation of an contract.
- I. Whenever the contractor or subcontractor has a collective bargaining agreement or other Contract or understanding with a labor union or an agency referring workers or providing or supervision apprenticeship or training for such workers, the compliance report shall include such information from such labor unions or agency practices and policies affecting compliance as the contracting agency or Civil Rights Division may prescribe; provided that, to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervision apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify the contracting agency as part of its compliance report and shall set forth what efforts he has made to obtain such information.
- J. The contracting agency or the Civil Rights Division shall require that the bidder or prospective contractor or subcontractor shall submit as part of his compliance report a statement in writing signed by an authorized offer or agent in behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training with which the bidder or prospective contractor deals with supporting information to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment employment and the terms and conditions of employment under the proposed contract shall be in accordance with the purpose and provisions of this order. In the event that the union or the agency shall refuse to execute such a statement, the compliance shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Civil Rights Division may require.

## PART II: ENFORCEMENT

- A. Each contracting agency shall be primarily responsible for obtaining compliance with this Executive Order with respect to contracts entered into by such agency or its CONSULTANTS. All contracting agencies shall comply with the rules of the Civil Rights Division in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this order and the rules and regulations and orders of the Civil Rights Division issued pursuant to this order. They are directed to cooperate with the Civil Rights Division and to furnish the Division such information and assistance as it may require in the performance of the Divisions functions under this order. They are further directed to appoint or designate from among the agency personnel compliance officers. It shall be the duty of such officers to first seek compliance with the objective of this order by conference, conciliation, mediation, or persuasion.
- B. The Civil Rights Division may investigate the employment practices of any government CONSULTANT or SUBCONSULTANT or initiate such investigation by the appropriate contracting agency or determine whether or not the contractual provisions specified in this order have been violated. Such investigations shall be conducted in accordance with the procedures established by the Civil Rights Division and the investigating agencies shall report to the Civil Rights Division any action taken or recommended. The Civil Rights Division may receive and investigate or cause to be investigated complaints by employees or prospective employees of government CONSULTANT or SUBCONSULTANT which allege discrimination contrary to the contractual provisions specified in Part I of this order. If the investigation is conducted for the Civil Rights Division by a contracting agency, that agency shall report to the Civil Rights Division what action has been taken or is recommended with regard to such complaint.
- C. The Civil Rights Division shall use its best efforts directing and through contracting agencies, other interested state and local agencies, CONSULTANTS, and all other available instrumentalities to cause any labor union to engage in work under government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purpose of this order.
- D. The Civil Rights Division or any agency, officer, or employee in the executive branch of the government designated by rule, regulation, or order of the Civil Rights Division may hold such hearings, public or private, as the Division may deem advisable for compliance, enforcement, or educational purposes. The Civil Rights Division may hold or cause to be held hearings in accordance with rules and regulations issued by the Civil Rights Division prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this order.
- E. No order for debarment of any CONSULTANT from further government contracts under this order shall be made without affording the CONSULTANT an opportunity for a hearing.
- F. Sanctions and Penalties: In accordance with such rules, regulations, or orders as the Civil Rights Division may issue or adopt, the Civil Rights Division or the appropriate contracting agency may publish or cause to be published the names of CONSULTANTS or unions which it has concluded have complied or have failed to comply with the provisions of this order and with the rules, regulations, and orders of the Civil Rights Division.

Contracts may be canceled in whole or in part, terminated, or suspended absolutely, or continuation of contracts may be conditioned upon a program for future compliance approved by the contracting agency or the Civil Rights Division; provided that any contracting agency shall refrain from entering into further contracts, extensions or other modifications of existing contracts with any noncomplying CONSULTANT until such CONSULTANT has established and will carry out personnel and employment policies in compliance with the provisions of this order.

Under rules and regulations prescribed by the Civil Rights Division, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this order by methods of conference, conciliation, mediation, and persuasion before proceeding shall be instituted under this order or before a contract shall be canceled or terminated in whole or in part under

this order for failure of a CONSULTANT or SUBCONSULTANT to comply with the contract provisions of this order.

G. This Executive Order shall become effective within sixty (60) days of its issuance.

In order to carry out the provisions of Executive Order 75-5, the CONSULTANT shall comply with the requirements of:

1. Standard Federal Equal Employment Opportunity Construction Contract Specifications, July 1, 1978, Revised November 3, 1980, Revised April 15, 1981, and
2. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity, July 1, 1978, Revised November 3, 1980, Revised April 15, 1981.

## **APPENDIX D**

### **MISCELLANEOUS NON-DISCRIMINATION ACTS**

The DPS shall comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1975, and State Executive Order No. 75-5 which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities. The DPS shall comply with section 503 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap. The DPS shall comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, in delivering contract services.

## APPENDIX E

### ENVIRONMENTAL, RESOURCE, ENERGY PROTECTION, AND CONSERVATION REQUIREMENTS

- A. Environmental Policy. The National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 1601 et seq.; the Council on Environmental Quality regulations, 40 C.F.R. Part 1500 et seq.; and the FHWA/FTA regulation, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771, as amended, are applicable to the Project.
- B. Compliance with Environmental Standards. DPS shall comply with the provisions of the Clean Air Act, as amended, 42 U.S.C. §§1857 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq.; and implementing regulations, in the facilities that are involved in the Project for which Federal assistance is given. DPS shall ensure that the facilities under ownership, lease or supervision, whether directly or under Contract, that will be utilized in the accomplishment of the Project are not listed on the Environmental Protection Agency (EPA) List of Violating Facilities. Contracts, subContracts, and subgrants of amounts in excess of \$100,000 shall contain a provision requiring compliance with all applicable standards, orders, or requirements issued pursuant to Federal statute or regulation. DPS and any third party DPS thereof shall be responsible for reporting any violations to the FHWA and to the EPA Assistant Administrator for Enforcement. In addition, DPS shall notify the FHWA of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be utilized in the Project is under consideration for listing by EPA.
- C. Air Pollution. No facilities or equipment shall be acquired, constructed, or improved as a part of the Project unless the DPS obtains satisfactory assurances that they are (or will be) designed and equipped to limit air pollution as provided in accordance with the following EPA regulations: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 C.F.R. Part 85; "Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines: Test Procedures for Light-Duty Vehicles and Light-Duty Trucks and Selective Enforcement Auditing of New Light-Duty Vehicles, Light-Duty Trucks and Heavy-Duty Engines," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600; in accordance with applicable federally-approved State Implementation Plan(s) (in particular, the Transportation Control Measures); and in accordance with appropriate FAA directives and all other applicable standards.
- D. Use of Public Lands. No publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State or local significance as determined by the Federal, State or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance may be used for the Project unless specific findings required under 49 U.S.C. § 303 are made by the Department of Transportation.
- E. Historic Preservation. The DPS shall assist the Government (FHWA) to comply with Section 106 of the national Historic Preservation Act involving historic and archaeological preservation by:
1. Consulting the State Historic Preservation Officer on the conduct of investigations, in accordance with Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties", 36 C.F.R. Part 800, to identify properties and resources listed in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and notifying the Government (FHWA) of the existence of any such properties; and
  2. Complying with all Federal requirements to avoid or mitigate adverse effects upon such properties.

- F. Energy Conservation. DPS, and its third party DPSs shall comply with mandatory standards and policies relating to energy efficiency that are contained in applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.
- G. Mitigation of Adverse Environmental Effects. Should the proposed Project cause adverse environmental effects, DPS shall take all reasonable steps to minimize such effects pursuant to 49 U.S.C. app. § 1610, other applicable statutes, and the procedures set forth in 23 C.F.R. Part 771. The ASU shall undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of contracts, and statements required by 49 U.S.C. § 303) and with any conditions imposed by the Government as part of a finding of no significant impact or a record of decision; all such mitigation measures are incorporated in and made part of this agreement by reference. In the event that some or all mitigation measures are deferred, once such measures are agreed upon by the government and DPS,, those mitigation methods subsequently determined will be incorporated into this agreement. Such mitigation measures may not be modified or withdrawn without the express written approval of the Government.
- H. Use of Fly Ash in Cement and Concrete. In carrying out the Project, the DPS shall make all appropriate efforts to foster the use of fly ash, substantially in compliance with EPA regulations "Guideline for Federal Procurement of Cement and Concrete Containing Fly Ash", 40 C.F.R. Part 249. Should DPS make a determination that the use of fly ash is inappropriate in a particular procurement of cement or concrete, DPS shall provide FHWA a written justification to support that decision.

